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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

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THE PEOPLE,

Plaintiff and Respondent,

v.

JOSHUA MARCUS BUSH,

Defendant and Appellant.

C086915

(Super. Ct. No. 16CF01895)

Appointed counsel for defendant Joshua Marcus Bush has filed an opening brief that sets forth the facts of the case and asks this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) We will affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Renae Disney helped the victim harvest and trim marijuana for several months. The victim had only paid her a small amount, in what turned out to be counterfeit bills.

Disney claimed that the victim owed her, her daughter, and her daughter's boyfriend \$10,000 for the work.

In November 2015, defendant, Disney, and three other men agreed to go to the victim's home to steal marijuana. The day of the planned heist, the group drove in two cars to the victim's home. On the way, Disney called the victim, who promised to pay her the next day. Disney tried to convince the group to call off the plans, but defendant insisted they proceed.

It was evening when the group arrived at the victim's house, and they pulled up with the car headlights off. The victim and his girlfriend were home at the time. Disney got out and headed to her trailer, which was parked on the property. Defendant and two of his male companions knocked on the door of the victim's house. Each of the three men was wearing rubber gloves and carrying a gun. The victim answered, and the three men pushed their way in and yelled, "Get down on the ground."

The victim threw a blanket over the head of the victim's girlfriend and she was escorted from the living room to the bedroom, where she was instructed to lie on the bed. At one point, she heard scuffling. The victim yelled at her to get out, so she fled.

Meanwhile, three of the male intruders broke into the nearby detached garage. As they were loading 400 pounds of marijuana from the garage into their cars, one of the men heard defendant inside the house yelling, "Where is the money?" He then heard glass breaking and a gunshot. The three men got into their two cars and fled, leaving defendant and Disney behind.

Police arrived and found the victim outside of his home, lying on the ground and in distress from a gunshot wound to his chest. There was a .22-caliber revolver on the ground three feet away from the victim, along with storage tubs of marijuana. A man the victim identified as the shooter fled the scene. The victim later died from his injuries.

Police found DNA from defendant and the victim on the revolver. Defendant's DNA was also found on a bathtub knob inside the victim's home. Police found 30

pounds of marijuana and the same ammunition from the revolver in the home of one of defendant's companions in the heist.

Defendant was charged with murder (Pen. Code, § 187, subd. (a)),<sup>1</sup> home invasion robbery (§ 211), and being a felon in possession of a firearm (§ 29800, subd. (a)(1)). It was further alleged defendant had personally used a firearm (§ 12022.5) and suffered a prior prison term (§ 667.5, subd. (b)).

In February 2018, defendant pleaded guilty to second degree murder and admitted the firearm enhancement. The court dismissed the remaining counts and enhancement with a waiver pursuant to *People v. Harvey* (1979) 25 Cal.3d 754, 758.

In March 2018, the trial court sentenced defendant to state prison for 15 years to life (§ 190, subd. (a)), plus 10 years consecutive for the firearm enhancement. The court imposed a \$10,000 restitution fine (§ 1202.4, subd. (b)), a corresponding \$10,000 parole revocation fine, suspended unless parole is revoked (§ 1202.45), a \$200 fine (§ 672), a \$40 court security fee (§ 1465.8), a \$30 conviction assessment fee (Gov. Code, § 70373), a \$40 state surcharge (§ 1465.7), a \$100 state court facilities construction fund fee (Gov. Code, § 70372, subd. (a)), a \$200 state penalty assessment (§ 1464), a \$140 county penalty assessment (Gov. Code, § 76000), a \$20 DNA identification fund fee (Gov. Code, § 76104.6), and a second \$80 DNA identification fund fee (Gov. Code, § 76104.7). The court also ordered defendant to pay \$1,077 for the probation report. (§ 1203.1.) The court awarded 94 days of custody credit.

## DISCUSSION

Appointed counsel filed an opening brief that sets forth the facts of the case and asks us to determine whether there are any arguable issues on appeal. (*People v. Wende, supra*, 25 Cal.3d 436.) Counsel advised defendant of the right to file a supplemental brief

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

